

Decision 02-11-017 November 7, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.

Rulemaking 00-10-002
(Filed October 5, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) \$29,682.76 in compensation for its contribution to Decisions (D.) 02-03-024 and D.02-04-060 regarding conservation voltage reduction (CVR) and interruptible program design for the electric utilities Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison).

1. Background

TURN's participation in this proceeding began with the filing of a prehearing conference statement and subsequent comments on CVR in another proceeding, Investigation (I.) 00-11-001, Order Instituting Investigation into Implementation of Assembly Bill 970 Regarding the Identification of Electric Transmission and Distribution Constraints, Actions to Resolve those Constraints, and Related Matters Affecting the Reliability of Electric Supply. That issue was later transferred to this proceeding. TURN submitted testimony and participated

in hearings on the voltage reduction issue in this rulemaking, which was resolved by D.02-03-024 (March 7, 2002). In the second phase, focusing on interruptible program design with consideration of some other issues, TURN submitted opening comments and reply comments. Phase 2 was substantially resolved by the adoption of D.02-04-060 (April 25, 2002). TURN seeks compensation both for its participation in R.00-10-002 and for its participation in the voltage reduction aspect of I.00-11-001 prior to its transfer to R.00-10-002.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.¹

To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation should be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to § 1804. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may

¹ Unless otherwise noted, all statutory citations are to the Public Utilities Code.

request a finding of eligibility based on a showing that the intervenor's participation would pose a significant financial hardship. Alternatively, a showing of financial hardship may be included in the request for compensation. Pursuant to Section 1804(b)(1), a finding of significant financial hardship in one Commission proceeding creates a rebuttable presumption of eligibility for compensation in other proceedings commencing within one year of the date of the finding.

Section 1804(c) requires an eligible customer to file a request for an award of compensation within 60 days of issuance of a final order or decision by the Commission in the proceeding and to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to determine whether the customer has made a substantial contribution and what amount of compensation to award. Section 1806 requires the Commission, in determining the amount of

compensation, to take into account the market rate paid to people with comparable training and experience who offer similar services.

3. Request for an Award of Compensation

TURN was found to be eligible for compensation in this proceeding by an Administrative Law Judge (ALJ) ruling dated February 6, 2001. The request for compensation was filed June 24, 2002, within 60 days of the April 4, 2002 mailing date of D.02-04-060, as required by § 1804(c). TURN supplemented this request on October 3, 2002. No opposition to the request for compensation was filed.

4. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.³

In its submissions on CVR,⁴ TURN both supported PG&E's ongoing voltage reduction efforts and urged that they be expanded. TURN also proposed that Edison be required to institute an emergency voltage reduction program. In

² Section 1802(h).

³ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to document thoroughly the safety issues involved).

⁴ We will use CVR to refer to the voltage reduction issue in both I.00-11-001 and this proceeding.

R.00-10-002 ALJ/BWM/jyc

D.02-03-024, we agreed with TURN's position on PG&E's program, but rejected the proposal that Edison implement an emergency voltage reduction program.

TURN made a substantial contribution to the decision, even though we did not adopt all of its recommendations. Recognizing this, TURN makes a voluntary reduction of 20% in the attorney time for which it requests compensation. Its claim for compensation for experts, however, seeks full compensation for the experts' time. TURN has offered no reasons for treating the time of the experts differently from that of the attorneys who worked on this aspect of the proceeding. We will accordingly reduce the compensable time claimed for the experts by 20% as well.

In Phase 2, TURN's principal focus was on urging a pay-for-performance interruptible program design. Although we did not adopt this position, we stated that we will continue to consider the price of interruptible programs, which was one of TURN's chief concerns. We noted that TURN made "a reasonably strong case" for its proposed interruptible program structure, and that we would consider alternative program structures if properly presented in appropriate later proceedings. We also declined to adopt proposals made by the California Energy Commission (CEC) and opposed by TURN. These were a surcharge that could yield up to \$200 million per year, and reinstitution and modification of a voluntary demand reduction program. TURN's contribution to the analysis of interruptible programs, as well as to the result of the proceeding, was substantial, even if not wholly successful. TURN, recognizing this, makes a voluntary reduction of 40% in the attorney time for which it requests compensation in Phase 2. Its claim for compensation for expert consultants in Phase 2 also seeks full compensation for the experts' time. TURN has offered no reasons for treating the time of the experts differently from that of the attorneys who worked on this phase of the proceeding. We will accordingly reduce the compensable time claimed for the experts by 40% as well.

5. The Reasonableness of Requested Compensation

5.1 TURN's Request

TURN requests compensation in the amount of \$36,437.11.⁵ We will adjust the amount requested both to reflect TURN's voluntary reductions and our extension of them, as described above, and to reflect hourly rates that we have currently approved, as explained in § 5.5, below.

TURN's request includes \$6,590.40 for attorney time on CVR, taking into account a 20% voluntary reduction, and \$12,925.55 for consultant time. For Phase 2, TURN claims \$4,971.00 for attorney time, taking into account a 40% voluntary reduction, and expert time in the amount of \$10,249.65. For preparation of the compensation request, TURN requests \$850.⁶ TURN also claims \$850.51 as direct expenses. TURN's request is broken down as follows:

<u>Name</u>	<u>Hours claimed</u>	<u>Hourly rate</u>	<u>Claimed</u>
<u>CVR (including I.00-11-001)</u>			
Robert Finkelstein	6.20	\$320 (2001)	\$1,984.00
Marcel Hawiger	18.56	190 (2001)	\$3,526.40
	5.40	200 (2002)	\$1,080.00
William Marcus	1.17	160	187.20
Gayatri Schilberg	34.95	115 (2000/01)	4,019.25
	67.07	130 (2001/02)	<u>8,719.10</u>
Subtotal CVR			\$19,515.95

⁵ In its October 3 Addendum to Request for Compensation, TURN clarified that it was seeking only a rate of \$160.00 per hour for the small number of hours expended by consultant William Marcus, without prejudice to seeking a higher rate in other proceedings. This clarification reduced the amount claimed from the \$36,451.96 originally presented in the June 24 request.

⁶ Pursuant to our practice, as set forth in D.98-04-059, TURN claims only half the attorney hours actually expended on preparation of the compensation request.

Phase 2

Robert Finkelstein	0.75	\$320 (2002)	\$240.00
Marcel Hawiger	7.50	190 (2001)	1,425.00
	16.53	200 (2002)	3,306.00
William Marcus	.99	160	158.40
Jeffrey Nahigian ⁷	87.75	115 (2001/02)	<u>10,091.25</u>
Subtotal Phase 2			\$15,220.65

Preparation of compensation request

Marcel Hawiger	4.25	200 (2002)	<u>\$850.00</u>
Subtotal request preparation			\$850.00

Direct expenses

Copying		\$624.60
Telephone		15.31
Fax		3.30
Postage		32.00
Consultant travel expenses		<u>175.30</u>
Subtotal expenses		\$850.51

Total Requested **\$36,437.11**

5.2 Overall Productivity and Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program

⁷ Although TURN’s summary tables present 88.75 hours for Nahigian, the underlying billing records show 87.75 hours; that is also the number of hours used to calculate the compensation request for his time. Accordingly, we will treat “88.75” as a typographical error.

administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42). In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We have recognized that in some situations it may be difficult or impossible to assign a dollar value, yet the participation was beneficial to ratepayers.⁸ TURN notes that there were no costs to allocate or direct monetary benefits to ratepayers in either phase, though in Phase 2 we did agree with TURN's position when we decided not to impose the surcharge proposed by the CEC. Overall, the benefits of TURN's participation in this proceeding outweigh the relatively small costs that TURN seeks to recover.

5.3 Duplication of Effort

The intervenor compensation program should be administered to avoid "unnecessary participation that duplicates the participation of similar interests." Section 1801.3(f). This does not mean that compensation should be denied simply because a party's participation has overlapped in some way with that of other parties. (See § 1802.5.) TURN and the Office of Ratepayer Advocates (ORA) had similar positions on some issues in this proceeding, but on the whole

⁸ See, for example, D.99-12-005, where we found that the benefits of TURN's participation outweighed the costs it claimed, although there was almost no monetary benefit. In D.00-10-014, we decided that improved utility responsiveness to outages was a benefit to ratepayers that would result in savings, though there was no direct dollar figure attached.

ORA focused its effort on issues different from those that TURN pursued. There was no unnecessary duplication of effort.

5.4 Hours Claimed

TURN has presented comprehensive time records for both attorneys and experts. It has explained its methodology for allocating time necessarily spent generally on the proceeding, which we find to be reasonable. The hours claimed are appropriately documented and were used efficiently. The discounts to the total hours that TURN has voluntarily applied to attorney hours and we are extending to expert hours, as explained in § 4, above, are not based on any deficiencies in the records presented in support of this compensation request.

5.5 Hourly Rates

The hourly rates requested for TURN's attorney, Hawiger, have been approved in D.02-09-040. In D.02-06-070 we approved a rate of \$310 per hour for 2001 for TURN's attorney, Finkelstein. Following TURN's lead in the treatment of Marcus' time, in this proceeding we compensate the small number of Finkelstein's hours in 2002 at the 2001 rate, without prejudice to any subsequent decision on rates for 2002.

TURN requests that we adopt increased hourly rates for economists Schilberg and Nahigian for fiscal year 2001/02. TURN requests an increase for Schilberg from \$115 per hour to \$130 per hour, and for Nahigian from \$100 per hour to \$115 per hour. While the percentage increases requested for these experts are larger than typical, TURN has supported them by providing resumes and comparisons of their requested rates with rates paid to others offering similar expertise and services. The increased rates have been adequately documented and we approve them.

5.6 Other Costs

TURN requests \$850.51 for copying, telephone, fax, postage, and travel expenses. These charges have been properly documented and are reasonable for the level of TURN's participation.

6. Award

We award TURN \$29,682.76, using our modifications to hourly rates and compensable hours, as described above, and set out in the table below:

<u>Name</u>	<u>Hours allowed</u>	<u>Hourly rate</u>	<u>Approved</u>
<u>CVR (including I.00-11-001)</u>			
Robert Finkelstein	6.20	\$310	\$1,922.00
Marcel Hawiger	18.56	190 (2001)	3,526.40
	5.40	200 (2002)	1,080.00
William Marcus	.94	160	150.40
Gayatri Schilberg	27.96	115 (2000/01)	3,215.40
	53.66	130 (2001/02)	<u>6,975.40</u>
Subtotal CVR			\$16,869.60
<u>Phase 2</u>			
Robert Finkelstein	0.75	\$310	\$232.50
Marcel Hawiger	7.50	190 (2001)	1,425.00
	16.53	200 (2002)	3,306.00
William Marcus	.59	160	94.40
Jeffrey Nahigian	52.65	115 (2001/02)	<u>6,054.75</u>
Subtotal Phase 2			\$11,112.65
<u>Preparation of compensation request</u>			
Marcel Hawiger	4.25	200 (2002)	<u>\$850.00</u>
Subtotal request preparation			\$850.00
<u>Direct expenses</u>			
Copying			\$624.60
Telephone			15.31

Fax	3.30
Postage	32.00
Consultant travel expenses	<u>175.30</u>
Subtotal expenses	\$850.51

Total Approved **\$29,682.76**

We will assess responsibility for payment among PG&E, SDG&E, and Edison, based on their respective 2001 California jurisdictional electric revenues.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing September 7, 2002, the 75th day after TURN filed its compensation request, and continuing until the utilities make full payment of the award. As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Waiver of Comment Period

This is an uncontested compensation matter in which the decision grants, with modifications, the relief requested. Accordingly, pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Burton Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has previously been found eligible for compensation in this proceeding.
2. TURN has made a timely request for compensation for its contributions to D.02-03-024 and D.02-04-060.
3. TURN made substantial contributions to D.02-03-024 and D.02-04-060.
4. TURN represented customer interests that would otherwise have been underrepresented. There was no significant duplication of effort between TURN and any other party.
5. The benefits to customers of TURN's participation outweigh the costs of participation.
6. TURN has requested hourly rates for attorneys and experts, as modified above, that are no greater than the market rates for individuals with comparable training and experience.
7. The miscellaneous other costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-12, which govern awards of intervenor compensation.
2. TURN should be awarded \$29,682.76 for its contribution to D.02-03-024 and D.02-04-060.
3. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the public review and comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$29,682.76 in compensation for its substantial contribution to Decision (D.) 02-03-024 and D.02-04-060.

2. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) shall be responsible for making payment to TURN based on their respective 2001 California jurisdictional electric revenues, within 30 days of the effective date of this order. PG&E, SDG&E, and Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15, beginning September 7, 2002 and continuing until full payment is made.

3. The public review and comment period for today's decision is waived.

This order is effective today.

Dated November 7, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0211017
Contribution Decision(s):	D0203024; D0204060
Proceeding(s):	R0010002
Author:	ALJ Mattson
Payer(s):	Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	6/24/02 (supplement 10/3/02)	\$36,437.11	\$29,682.76	Failure to prevail

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001	\$190
Marcel	Hawiger	Attorney	The Utility Reform Network	\$200	2002	\$200
Robert	Finkelstein	Attorney	The Utility Reform Network	\$320	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$320	2002	\$310
William	Marcus	Economist	The Utility Reform Network	\$160	2001	\$160
William	Marcus	Economist	The Utility Reform Network	\$160	2002	\$160
Gayatri	Schilberg	Economist	The Utility Reform Network	\$115	2000/01	\$115
Gayatri	Schilberg	Economist	The Utility Reform Network	\$130	2001/02	\$130
Jeffrey	Nahigian	Economist	The Utility Reform Network	\$115	2001/02	\$115